

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

SHEILA MARIE MONTOYA ELLISON,

Plaintiff,

vs.

No. CIV 99-359 LFG/RLP

LOVELACE HEALTH SYSTEMS,

Defendant.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court on Plaintiff's Motion to Stay Proceedings [Doc. 57]. No response is necessary. The Court, having reviewed the motion, finds that it is not well taken and will be denied.

The Court granted Defendant's Motion for Summary Judgment, and Judgment was entered in this case, on July 12, 2000. Plaintiff's Notice of Appeal was filed on August 10, 2000, a few hours after Defendant filed motions for attorneys' fees and motion to tax costs. Instead of filing a response to the motions for attorneys' fees and costs, Plaintiff asks the Court to stay all proceedings until the the appeal process is completed. Plaintiff cites no grounds for this request, other than the fact that an appeal is pending.

Once a notice of appeal has been filed, the District Court is generally divested of jurisdiction over issues involved in the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S. Ct. 400, 402 (1982). However, the District Court may retain jurisdiction over collateral matters which are not the subject of the appeal, such as costs and attorneys' fees.

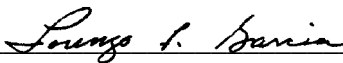
Budinich v. Becton Dickinson & Co., 486 U.S. 196, 108 S. Ct. 1717 (1988); Garcia v. Burlington N. R.R. Co., 818 F.2d 713, 721 (10th Cir. 1987); Lancaster v. Indep. Sch. Dist. No. 5, 149 F.3d 1228, 1237 (10th Cir. 1998).

Plaintiff's notice of appeal was filed on the same day, but some hours after, Defendant's motions for attorneys' fees and costs. Under F. R. App. P. 4(a)(4)(A), the filing of certain post-judgment motions delays accrual of the time for filing a notice of appeal until after entry of an order resolving the motion. A motion for attorneys' fees under Rule 54 is one of the motions designated in Rule 4(a)(4)(A); however, such a motion will delay accrual of the time for appeal only "if the district court extends the time to appeal under Rule 58." Rule 4(a)(4)(A)(iii).

The Court did not extended the time for appeal as provided in F. R. Civ. P. 58. The parties are advised that a separate notice of appeal will be required, if either of them wishes to appeal from any orders resolving the attorney fees and costs issues. EEOC v. Wal-Mart Stores, Inc., 187 F.3d 1241, 1250 (10th Cir. 1999).

IT IS THEREFORE ORDERED that Plaintiff's Motion to Stay Proceedings [Doc. 57] is denied;

IT IS FURTHER ORDERED that Plaintiff shall file her response to Defendant's Motion for Attorney's Fees [Doc. 52], and Motion to Tax Costs [Doc. 54], within 10 days of entry of this Order.

  
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Lorenzo F. Garcia  
United States Magistrate Judge